

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL FOR THE STATE OF COLORADO, and LAURA E. UDIS, ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE, Plaintiffs, v. WESTERN SKY FINANCIAL, L.L.C., and MARTIN A. WEBB, Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
JOHN W. SUTHERS, Attorney General PAUL CHESSIN, Senior Assistant Attorney General* 1525 Sherman Street, 7 th Floor Denver, Colorado 80203 Telephone: (303) 866-4494 Registration Number: 12695 *Counsel of Record	Case No. Courtroom
COMPLAINT	

Plaintiffs, the State of Colorado ex rel. John W. Suthers, Attorney General for the State of Colorado, and Laura E. Udis, Administrator, Uniform Consumer Credit Code (collectively the State), by and through the undersigned senior assistant attorney general, for their complaint, allege as follows:

I. INTRODUCTION

1. By this action, the State seeks to enjoin, preliminarily and permanently, defendants Western Sky Financial, L.L.C. (Western Sky), and its principal, Martin A. Webb (Webb) (collectively defendants), from making or collecting supervised loans to Colorado consumers without being licensed as a Colorado supervised lender and from otherwise violating the Colorado Uniform Consumer Credit Code, §§ 5-1-101, et seq., C.R.S. 2010 (Code), and Colorado Consumer Protection Act, §§ 6-1-101, et seq., C.R.S. 2010 (CPA). The State also seeks other appropriate relief, including consumer restitution, penalties, and other

equitable relief.

II. PARTIES

2. John W. Suthers is the duly elected Attorney General of the State of Colorado. He is authorized under CPA § 6-1-103 to enforce the CPA, and may bring a civil action against a person for engaging in deceptive trade practices. In such action, the State may seek injunctive relief to prohibit the person from violating the CPA, obtain consumer restitution, and collect civil penalties for violations of the CPA. See CPA §§ 6-1-110, 6-1-112, and 6-1-113.

3. The Administrator is the duly appointed Administrator of the Uniform Consumer Credit Code. She is authorized to enforce compliance with the Code, see Code §§ 5-6-101, et seq.; and may bring a civil action against a creditor for making or collecting charges in excess of those permitted by the Code. In such action, the Administrator may seek injunctive relief to restrain persons from violating the Code, obtain consumer restitution, and collect civil penalties for violations of the Code. See Code §§ 5-6-111, 5-6-113, and 5-6-114.

4. Defendant Western Sky is a foreign company organized under the laws of South Dakota. It is not authorized to transact business in Colorado. It is, and at all relevant times was, regularly engaged in soliciting, making, and collecting supervised loans in Colorado to and from Colorado consumers.

5. Defendant Webb is, and at all relevant times was: (a) an owner, officer, director, shareholder, or principal of; (b) directed, controlled, managed, participated in, supervised, was responsible for, or authorized the activities of; or (c) in the course of his business, vocation, or occupation engaged in; Western Sky's business and transactions, including the acts and practices described herein. Webb is, and at all relevant times was, Western Sky's sole manager, sole executive officer, and, directly or indirectly, its sole member and owner.

III. GENERAL FACTS

Defendants' Business

6. Western Sky is, and at all relevant times was, principally engaged in the business of making personal loans to consumers. The principal amount of its loans typically range from approximately \$400.00 to \$2,600.00. The loans are payable in monthly installments and have terms typically ranging from

approximately 7 to 36 months. The loans have annual percentage rates (APRs) of from approximately 140% to over 300%.

7. In connection with its business, Western Sky maintains, and at all relevant times maintained, a website, www.westernsky.com, in which it offers and solicits its loans in Colorado to Colorado consumers.

8. Western Sky's website states that "Western Sky offers personal loans of up to \$2,600. Personal loans that are not secured by personal property or collateral like a home or car. You can have your loan proceeds wired to your checking account in one business day after you provide all required documentation and pending credit approval."

9. Consumers apply for loans directly through Western Sky's website. As part of obtaining a loan, consumers enter into a form loan agreement with Western Sky electronically via the website. This loan agreement is called "Western Sky Consumer Loan Agreement" (Agreement).

10. Western Sky disburses the loan's proceeds by electronically depositing the proceeds directly into the consumer's checking or other bank account.

11. Similarly, and pursuant to the Agreement, the consumer authorizes Western Sky to debit and withdraw electronically funds from the consumer's bank account for the scheduled monthly installments due under the loan. By this authorization, the consumer also authorizes Western Sky to withdraw electronically other funds from the consumer's account for payment of other additional fees or charges as may be due.

12. The Agreement subjects the consumer to a \$29.00 late fee if an installment is not paid within 15 days of its due date. The Agreement entitles Western Sky to collect this late fee by electronically debiting the consumer's bank account.

13. The Agreement subjects the consumer to a \$29.00 insufficient funds fee if any of the consumer's payments are returned for insufficient funds.

14. The Agreement states that it is "governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Cheyenne River Sioux Tribe."

15. Similarly, Western Sky's website states that all loans "will be subject solely to the exclusive laws and jurisdiction

of the Cheyenne River Sioux Tribe, Cheyenne River Indian Reservation" and that all consumers "must consent to be bound to the jurisdiction of the Cheyenne River Sioux Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Loan Agreement, its enforcement or interpretation."

16. Western Sky's website further states that it "is a Native American-owned business operating within the boundaries of the Cheyenne River Sioux Reservation, a sovereign nation located within the United States of America."

17. In 2010, Western Sky made over 200 loans to Colorado consumers.

18. None of Western Sky's loans exceed \$75,000.00.

19. Western Sky's consumers use the loans primarily for personal, family, or household purposes.

20. Western Sky is not, and at no relevant times was, licensed as a supervised lender in Colorado authorized to make supervised loans pursuant to the Code.

The State's Investigation

21. In or about October 2010, through inquiries made to a different licensed supervised lender, the Administrator became aware of Western Sky and that it was making loans in Colorado to Colorado consumers.

22. The Administrator thereupon began investigating Western Sky and its activities.

23. As part of this investigation, the Administrator viewed Western Sky's website. She also obtained sample loans and loan documents from the other licensed lender.

24. Based on the information the Administrator obtained, she determined that Western Sky was making unlicensed supervised loans in Colorado in violation of the Code. She also determined that Western Sky's loans' APRs exceeded any loan finance charges allowable under Code § 5-2-201.

25. Accordingly, in November 2010, the Administrator made demand upon Western Sky to cease and desist from making any further loans. She also requested that it provide her with a list of all loans made to Colorado consumers. And, she demanded

that it make refunds to consumers of all improper and excess finance and other charges it may have charged, assessed, collected, or received in connection with its loans.

26. To date, Western Sky has not complied with the Administrator's demands.

IV. FIRST CLAIM FOR RELIEF
INJUNCTIVE RELIEF - CODE

27. The State repeats and realleges paragraphs 1 through 26 above, inclusive, as if alleged herein.

28. By reason of the foregoing, defendants violated, and continue to violate, Code §§ 5-1-106(1) (providing that consumers may not waive or forego rights or benefits under Code), 5-1-201(8) (prohibiting and invalidating agreements that provide the law of another state shall apply, require the consumer to consent to the jurisdiction of another state, or fix venue), 5-2-201 (limiting allowable finance charges), 5-2-203 (limiting allowable delinquency charges), 5-2-301 (prohibiting making or collecting supervised loans without a supervised lender's license), and 5-3-110 (prohibiting false, misleading, or deceptive advertising).

29. By reason of the foregoing, and pursuant to Code §§ 5-6-111 and 5-6-113, the Administrator is entitled to injunctive relief preliminarily and permanently restraining defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from engaging in supervised lending or otherwise acting as a supervised lender without a license or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the Code, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring defendants to disgorge to the Administrator or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the Code.

V. SECOND CLAIM FOR RELIEF
REFUNDS TO CONSUMERS - CODE
UNLICENSED LENDER

30. The State repeats and realleges paragraphs 1 through

26 and 28 above, inclusive, as if alleged herein.

31. Western Sky's transactions' finance charges exceed the finance charges allowable under Code § 5-2-201.

32. By reason of the foregoing, Western Sky made and collected, and continues to make and collect, supervised loans without being licensed or otherwise authorized to make or collect such loans in violation of Code § 5-2-301.

33. By reason of the foregoing, and pursuant to Code §§ 5-5-201(1) and 5-6-114(1), for every loan as may be determined at trial or otherwise in which a consumer was charged a loan finance charge in violation of the above, the consumer is entitled to a refund of the loan finance charge plus a penalty in an amount to be determined by the Court not in excess of three times the amount of the loan finance charge.

VI. THIRD CLAIM FOR RELIEF
REFUNDS TO CONSUMERS - CODE
EXCESS CHARGES

34. The State repeats and realleges paragraphs 1 through 26, 28, and 31, above, inclusive, as if alleged herein.

35. Western Sky's insufficient funds fees exceed the fee authorized and allowable under Code § 5-2-202(1)(e)(II).

36. Western Sky's late fees exceed the charge authorized and allowable under Code § 5-2-203(1)(a).

37. By reason of the foregoing, Western Sky charged, assessed, collected, or received excess charges in violation of Code §§ 5-2-202 and 5-2-203.

38. By reason of the foregoing, and pursuant to Code §§ 5-5-201(2) and 5-6-114(1), for every loan as may be determined at trial or otherwise in which a consumer was charged an excess charge in violation of the above, the consumer is entitled to a refund of the excess charge.

VII. FOURTH CLAIM FOR RELIEF
CIVIL PENALTY TO CONSUMERS - CODE

39. The State repeats and realleges paragraphs 1 through 26, 28, 31 through 32, and 35 through 37, above, inclusive, as if alleged herein.

40. Western Sky engaged in its loans, including making excess charges, in deliberate violation of or in reckless disregard of the Code.

41. Western Sky has refused, and continues to refuse, to refund to consumers excess charges within a reasonable time after demand by the Administrator.

42. By reason of the foregoing, and pursuant to Code § 5-6-114(1), for every loan as may be determined at trial or otherwise in which a consumer was charged an excess charge, defendants are is required to pay to each such consumer a civil penalty determined by the Court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge.

VIII. FIFTH CLAIM FOR RELIEF
CIVIL PENALTY TO ADMINISTRATOR - CODE

43. The State repeats and realleges paragraphs 1 through 26, 28, 31 through 32, 35 through 37, and 40 through 41, above, inclusive, as if alleged herein.

44. Western Sky's violations and course of conduct as alleged above are repeated and willful.

45. By reason of the foregoing, and pursuant to Code § 5-6-114(2), the Administrator is entitled to recover from defendants a civil penalty not to exceed \$5,000.00.

IX. SIXTH CLAIM FOR RELIEF
CIVIL PENALTY TO THE STATE - CPA
UNLICENSED BUSINESS

46. The State repeats and realleges paragraphs 1 through 26 above, inclusive, as if alleged herein.

47. Western Sky failed, and continues to fail, to obtain all governmental licenses required to engage in its loans.

48. By reason of the foregoing, defendants engaged, and continue to engage, in deceptive trade practices in violation of CPA § 6-1-105(1)(z).

49. By reason of the foregoing, and pursuant to CPA § 6-1-112(1), for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, the State is entitled to a penalty of not more than

\$2,000.00 or, in the case of an elderly person, \$10,000.00.

X. SEVENTH CLAIM FOR RELIEF
CIVIL PENALTY TO THE STATE - CPA
MISLEADING STATEMENTS

50. The State repeats and realleges paragraphs 1 through 26 above, inclusive, as if alleged herein.

51. By reason of the foregoing, Western Sky made, and continues to make, false or misleading statements of fact concerning its loans, including, without limitation, the law governing and jurisdiction applicable thereto.

52. By reason of the foregoing, defendants engaged, and continue to engage, in deceptive trade practices in violation of CPA § 6-1-105(1).

53. By reason of the foregoing, and pursuant to CPA § 6-1-112(1), for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, the State is entitled to a penalty of not more than \$2,000.00 or, in the case of an elderly person, \$10,000.00.

XI. EIGHTH CLAIM FOR RELIEF
CIVIL PENALTY TO THE STATE - CPA
FAILURE TO MAKE DISCLOSURES

54. The State repeats and realleges paragraphs 1 through 26, above, inclusive, as if alleged herein.

55. In each of its loans, Western Sky failed, and continues to fail, to disclose to the consumer information concerning the law governing and jurisdiction applicable to its loans, including, without limitation, that consumers cannot waive or forego their rights or benefits under the Code.

56. This information was material, and, upon information and belief, was known to Western Sky at the time of the loan and Western Sky's failure to disclose the information was intended to induce the consumer to enter into the transaction.

57. By reason of the foregoing, defendants engaged, and continue to engage, in deceptive trade practices in violation of CPA § 6-1-105(1)(u).

58. By reason of the foregoing, and pursuant to CPA § 6-1-112(1), for every loan as may be determined at trial or

otherwise in which defendants engaged in a deceptive trade practice, the State is entitled to a penalty of not more than \$2,000.00 or, in the case of an elderly person, \$10,000.00.

XII. NINTH CLAIM FOR RELIEF
CIVIL PENALTY TO THE STATE - CPA
FALSE REPRESENTATIONS

59. The State repeats and realleges paragraphs 1 through 26, above, inclusive, as if alleged herein.

60. By reason of the foregoing, defendants knowingly made, and continue to make, false representations as to the source, sponsorship, approval, or certification of goods, services, or property.

61. By reason of the foregoing, defendants engaged, and continue to engage, in deceptive trade practices in violation of CPA § 6-1-105(b).

62. By reason of the foregoing, and pursuant to CPA § 6-1-112(1), for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, the State is entitled to a penalty of not more than \$2,000.00 or, in the case of an elderly person, \$10,000.00.

XIII. TENTH CLAIM FOR RELIEF
CIVIL PENALTY TO STATE - CPA
FALSE REPRESENTATIONS

63. The State repeats and realleges paragraphs 1 through 26, above, inclusive, as if alleged herein.

64. By reason of the foregoing, defendants knowingly made, and continue to make, false representations as to affiliation, connection, or association with or certification by another.

65. By reason of the foregoing, defendants engaged, and continue to engage, in deceptive trade practices in violation of CPA § 6-1-105(c).

66. By reason of the foregoing, and pursuant to CPA § 6-1-112(1), for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, the State is entitled to a penalty of not more than \$2,000.00 or, in the case of an elderly person, \$10,000.00.

XIV. ELEVENTH CLAIM FOR RELIEF

GENERAL INJUNCTIVE AND OTHER EQUITABLE RELIEF - CPA

67. The State repeats and realleges paragraphs 1 through 26 and 47 through 66, above, inclusive, as if alleged herein.

68. By reason of the foregoing, and pursuant to CPA § 6-1-110(1), the State is entitled to injunctive relief preliminarily and permanently restraining defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from engaging in supervised lending or otherwise acting as a supervised lender without a license or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the CPA, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring defendants to disgorge to the State or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the CPA.

WHEREFORE, the State demands judgment, as follows:

(i) as to the First Claim for Relief, preliminarily and permanently restraining defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from engaging in supervised lending or otherwise acting as a supervised lender without a license or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the Code, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring defendants to disgorge to the Administrator or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the Code;

(ii) as to the Second Claim for Relief, for every loan as may be determined at trial or otherwise in which a consumer was charged a loan finance charge in violation of the Code, ordering defendants to refund to each such consumer the loan finance charge plus a penalty in an amount to be determined by the Court

not in excess of three times the amount of the loan finance charge;

(iii) as to the Third Claim for Relief, for every loan as may be determined at trial or otherwise in which a consumer was charged an excess charge in violation of the Code, ordering defendants to refund to each such consumer the excess charge;

(iv) as to the Fourth Claim for Relief, for every loan as may be determined at trial or otherwise in which a consumer was charged an excess charge, ordering defendants to pay to each such consumer a civil penalty determined by the Court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge;

(v) as to the Fifth Claim for Relief, ordering defendants to pay to the Administrator a civil penalty determined by the Court within the limits set forth by statute;

(vi) as to the Sixth Claim for Relief, for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, ordering defendants to pay to the State a civil penalty within the limits set forth by statute;

(vii) as to the Seventh Claim for Relief, for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, ordering defendants to pay to the State a civil penalty within the limits set forth by statute;

(viii) as to the Eighth Claim for Relief, for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, ordering defendants to pay to the State a civil penalty within the limits set forth by statute;

(ix) as to the Ninth Claim for Relief, for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, ordering defendants to pay to the State a civil penalty within the limits set forth by statute;

(x) as to the Tenth Claim for Relief, for every loan as may be determined at trial or otherwise in which defendants engaged in a deceptive trade practice, ordering defendants to pay to the State a civil penalty within the limits set forth by statute;

(xi) as to the Eleventh Claim for Relief, preliminarily and permanently restraining defendants, and their officers, directors, agents, servants, employees, attorneys, heirs, successors, and assigns, from engaging in supervised lending or otherwise acting as a supervised lender without a license or otherwise committing any of the practices, acts, conduct, transactions, or violations described above, or otherwise violating the CPA, together with all such other relief as may be required to completely compensate or restore to their original position all consumers injured or prevent unjust enrichment of any person, by reason or through the use or employment of such practices, acts, conduct, or violations, or as may otherwise be appropriate, including, without limitation, requiring defendants to disgorge to the State or make restitution to consumers of all amounts charged, assessed, collected, or received in violation of the CPA;

(xii) as to all Claims for Relief as may be appropriate, interest as may be allowed by contract, law, or otherwise; and

(xiii) awarding the State the costs and disbursements of this action, including attorney's fees, together with all such further relief as the Court deems just.

Dated: Denver, Colorado
 January 25, 2011

JOHN W. SUTHERS
Attorney General

s/ Paul Chessin

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